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IN THE
COURT OF APPEALS OF INDIANA

PERCY BRONSON,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A02-0608-CR-662
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Jane Magnus-Stinson, Judge
Cause Nos. 49G06-0403-MR-40861 and
49G06-0507-MR-118889

May 15, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

DARDEN, Judge

STATEMENT OF THE CASE

Percy Bronson appeals from the sentence imposed by the trial court following his conviction by jury of conspiracy to commit battery (a class C felony) in the March 7, 2004 homicide of Joshua McAtee, and his subsequent pleas of guilty to voluntary manslaughter (a class A felony) of McAtee and conspiracy to commit battery (a class C felony) in the July 7, 2005, homicide of Christopher Bridges.

We affirm.

ISSUES

1. Whether the trial court abused its discretion in sentencing Bronson.

2. Whether the aggregate sentence is inappropriate in light of the nature of the offenses and Bronson's character.

FACTS

On March 7, 2004, Charles Parker was in his driveway working on his truck when Dwight Brentz swerved off the street and drove through Parker's front lawn – leaving tire marks in the yard. Parker yelled at Brentz. Brentz jumped out of his car and "grabbed" Parker. (Tr. 44). At this point, Joshua McAtee arrived, driving his pickup truck along with his sixteen-year-old girlfriend, Shela Raab. McAtee ran to the fighting twosome, pulled Brentz off of Parker, and flung Brentz – causing Brentz to strike his head on his own car door. Brentz suffered a cut to the side of his head. Brentz yelled a vow of revenge against McAtee and drove away.

Brentz called a number of his friends, told them that he had been attacked by McAtee, and enlisted their assistance in finding McAtee to inflict a beating on him. In

response to the call, Clint Smith went to Brentz's house, where three other friends had already gathered. Two more of Brentz's friends also arrived. Four of the men got in Brentz's car, and three (including Percy Bronson) got in Smith's car. As the two cars were leaving, Christopher Bridges arrived in his car. Bronson yelled at him that "somebody jumped [Brentz] and they were going over there." (Tr. 245). Bridges pulled in behind and followed the other two cars.

The eight men went to Parker's house, where they yelled for McAtee and shouted profanity. When they were told that McAtee was not there, they left to drive to where they believed he resided. On their way, they saw McAtee driving in the opposite direction. All three cars made U-turns and followed McAtee.

McAtee turned into the drive of an apartment complex, made a U-turn, and attempted to exit the complex. Smith pulled his car in front of McAtee's truck, Brentz blocked him from behind, and Bridges was off to the side. McAtee rammed his truck into Smith's car in front and Brentz's car behind but was unable to escape the trap. Brentz ran to the driver's side of the truck, opened the door, and was "trying to punch [McAtee] and pull him from the vehicle." (Tr. 159). Meanwhile, Smith had run to the passenger side, opened the door and "was trying to pull [Raab] out" to "get across [her] to get to [McAtee]." *Id.*, 100.

At least four gunshots were fired, as evidenced by four bullets holes through the truck's windshield. Bridges, who had never left his vehicle, saw Bronson standing in front of McAtee's truck "as the shots was [sic] firing," holding a gun pointed straight

toward the truck. (Tr. 261). Two bullets struck McAtee, one inflicting a fatal head wound. McAtee fell from the truck, and the men fled in the three cars.

Smith's front seat passenger asked Bronson, in the back seat, why "[he] shot him in the head." (Tr. 165). Smith turned and saw that Bronson had a Tec-9 semi-automatic handgun "in his hands." (Tr. 166). Smith then asked Bronson why he shot McAtee, and Bronson responded that it was "right" to "retaliate." *Id.*

Detective John Gray of the Marion County Sheriff's Department learned from Smith and Bridges that Bronson was the shooter. On March 10, 2004, the State charged Bronson with murder; conspiracy to commit battery, a class C felony; and carrying a handgun without a license (both as a class A misdemeanor and as a class C felony due to a prior felony conviction).

Bronson learned that Bridges might testify against him at trial. To prevent his testimony, Bronson communicated by telephone calls and letters with his friend Shaun Matthews. On July 7, 2005, four days before Bronson's trial was scheduled to begin, Matthews fatally shot Bridges. On July 14, 2005, the State charged Bronson (and Matthews) with murder in the death of Bridges.

On June 5 – 7, 2006, Bronson was tried by a jury on the charges arising in the homicide of McAtee. By stipulation of the parties, Bridges' deposition was read "in lieu of . . . Bridges' testimony because . . . Bridges was killed." (Tr. 226). The jury found Bronson guilty of conspiracy to commit battery, a class C felony. However, it was unable to reach a unanimous verdict on the murder and carrying-a-handgun counts, and the trial court declared a mistrial on those counts.

On June 21, 2006, Bronson and the State filed with the trial court two written plea agreements. With respect to the charges arising in the homicide of McAtee on March 7, 2003, Bronson would plead guilty to the lesser included offense of voluntary manslaughter, a class A felony; the State would dismiss the carrying-a-handgun charge; the State would recommend that Bronson be sentenced to forty years for the manslaughter offense; and Bronson "agreed that the sentence recommended . . . is the appropriate sentence." (App. 205). With respect to the charges arising in the homicide of Bridges on July 7, 2005, Bronson would plead guilty to conspiracy to commit battery, a class C felony; other charges would be dismissed; and sentencing would be determined by the trial court.

Also on June 21, 2006, having received the tendered plea agreements, the trial court explained to Bronson that it had the discretion to impose consecutive sentences – with a possible maximum sentence totaling fifty-six years. Bronson also admitted that he was on parole at the time of McAtee's killing.

With respect to the factual basis for the voluntary manslaughter offense, the State asserted that on March 7, 2004, McAtee became involved in a physical altercation with Brentz at Parker's residence; that Brentz subsequently telephoned friends, who met him and traveled in three cars to Parker's house "looking for . . . McAtee" with "the intent of . . . everybody, with the exception of . . . Bronson," being "to find . . . McAtee and beat him"; that when McAtee was not found at Parker's house, "they continued looking for him" until they located McAtee "in his truck with his girlfriend" and proceeded to "block[] in" McAtee's vehicle at a certain location; that McAtee's truck then struck the

cars of Smith and Brentz "in an attempt to get away"; that Bronson -- in "anger[] and . . . sudden heat as a result of the striking of the vehicles," got out of Smith's vehicle, stood in front of McAtee's truck, and "fired four shots into the truck from the front windshield striking . . . McAtee, causing him to die." (Tr. 535, 536). Bronson admitted that these facts were true. With respect to the conspiracy to commit battery upon Bridges, the State asserted that between March and July of 2005, "Bronson communicated with . . . Matthews both by telephone and by letter, and they agreed to commit a battery upon . . . Bridges preventing him from coming to trial to testify in the McAtee trial; and on July 7, 2005, . . . Matthews shot at and against . . . Bridges." (Tr. 536). Bronson admitted that these facts were true. The trial court then accepted Bronson's guilty pleas and found him guilty of the voluntary manslaughter of McAtee and of conspiracy to commit battery upon Bridges.

The trial court ordered a pre-sentence investigation report (PSI). At the sentencing hearing on July 12, 2006, the trial court noted that Bronson had written two letters to the court "concerning his request to withdraw" his guilty pleas; however, the trial court stated that it would "not permit" such a withdrawal. (Tr. 548, 549). It also noted that Bronson "was not cooperative" with respect to preparation of the PSI. (Tr. 549). Offered the opportunity to add to the PSI, Bronson reported that since being jailed, he had become a father. Bronson testified that he was "sorry for all the pain and suffering" that the McAtee family and Raab had suffered, asked that they forgive him, and sought "leniency" from the trial court in sentencing him. (Tr. 594, 597). The State argued that based upon his juvenile and adult criminal history, the nature of the offense, and the fact

that he was on parole at the time of the offense, Bronson should be sentenced to the maximum sentence of eight years for the offense of conspiracy to commit battery upon McAtee and that the eight-year sentence should be consecutive to the voluntary manslaughter sentence of forty years, pursuant to the plea agreement. (Tr. 599). Regarding the Bridges conspiracy, again noting his criminal history as well as the fact that the said "offense occurred while he was incarcerated" and "a party to" it, the State also asked that Bronson be sentenced to the maximum sentence of eight years for the offense of conspiracy to commit battery upon Bridges. Bronson's counsel asked that the trial court consider as mitigators the following: that he was "only twenty-one years old" at the time of the offense; that incarceration would be a hardship on his child and on Bronson's father, who was in poor health; that Bronson's criminal history was "minimal"; that Bronson was employed at the time of his arrest; that "there had been the prior act of violence between Mr. McAtee and Brentz, and the fact that the cars were being rammed"; and Bronson's guilty plea. (Tr. 601, 602).

The trial court then addressed the arguments and imposed sentence as follows.

> . . . . With respect to the defendant's age, the Court does not afford the defendant's age any weight in mitigation considering that . . . McAtee . . . was younger . . . . With respect to the substantial hardship to . . . the defendant's child, I don't think there was much thought for the care of that child on the day that Mr. Bronson and the other fellows went to extract their revenge on Mr. McAtee. With respect to the fact that he was working, . . . I'm not quite clear on his work history since he didn't cooperate with the PSI writer in terms of where he was working at the time of his arrest. There is some indication of a work history there, his mother did testify, and I'll afford that minimal weight. With respect to his criminal history, his criminal history conviction, there was a juvenile true finding for a crime of violence, and the crime for which he served time with the Department of Correction was for cocaine and gun simultaneous possession. I don't find

that minimal. I don't find it particularly aggravating; I don't find it minimal, I don't find it as a mitigator. The Court wholly rejects the proffered mitigator with respect to the fact of the prior altercation. The Court cannot countenance individuals trying to seek revenge on a brief physical altercation by ganging up seven people on one, and in this case then using deadly force in order to ex[]act their revenge. With respect to the fact that Joshua McAtee was ramming the two vehicles, I think he was probably trying to get the heck out of there, and that is a perfectly natural response. With respect to the proffered mitigator that the defendant did plead guilty, I will afford minimal weight to that. I would have afforded significant weight to it but for the letters that were sent to the Court, which the Court finds as another attempt by the defendant to play the game, and that game was influenced throughout this case with the attempts to influence Christopher Bridges' testimony, and which ultimately led to the conviction in the second case. He's pled guilty in that case and it's a proper aggravator for the court to consider. With respect to his remorse, I can't look into his heart and tell you whether he is saying that because he knows he's supposed to, or whether he feels it. And I can't find it as a mitigator for that reason. In aggravation, I look to the factual basis from the guilty plea hearing and note that the defendant admitted that he and six other individuals went to pay back Mr. McAtee for the altercation with Mr. Brentz. He was boxed in, he was with his sixteen year old girlfriend, he was wholly unarmed. And under those circumstances the Court finds those fact to be aggravating. Quite frankly, he could have gotten the whipping they set out to do and we wouldn't all be here today having to watch the video about the life of Joshua McAtee. They could have ex[]acted their revenge, maybe would have had to pay somewhat for that, but his mother wouldn't be in the position she's in, either, had Mr. Bronson not taken this to a lethal level. So I find that those facts as contained on [the transcript] of the guilty plea [hearing] as admitted by the defendant to be aggravating in this case. The Court finds those aggravators outweigh any proffered mitigators. The Court will impose the sentence on Count One, Voluntary Manslaughter, . . . a lesser included offense, of forty years. . . . . With respect to Count Three, for which the jury found him guilty [of the conspiracy to commit battery upon McAtee] the Court will impose an aggravated sentence of six years. The Court will order those sentences to run consecutive to each other. It could have stopped with the conspiracy, it could have stopped at a battery, and it was Mr. Bronson's decision that escalated it into the circumstances . . . we have here. On [the conspiracy to commit battery upon Bridges], . . . the Court would incorporate the Court's same reference with respect to the mitigating, the same statement the court made with respect to mitigation. In aggravation, the Court would note Christopher Bridges was . . . the sole person who admitted that he saw the

> shooting. I can't speak to the truthfulness of the other defendants who pled. But he was known to be the sole eyewitness to the shooting, or at least the sole person who saw Mr. Bronson with the gun before he got back into the car. His testimony was, therefore, significant. The fact that Mr. Bronson sought to influence that testimony . . . and sought to influence it by conspiring with another to cause physical harm to Christopher Bridges, the Court finds to be significantly aggravating. And because of that, the Court finds that the maximum sentence on that case is appropriate. That's the sentence. And in that case I will find that his prior criminal history is again not particularly aggravating, but is relevant. The fact that he was incarcerated on the murder charge on the eve of trial is aggravating. And the fact that he . . . was in some sort of a no-man's land on the parole status[1] was also aggravating. The Court will impose the maximum sentence of eight years on that Count. . . . . The Court will exercise its discretion to run that sentence consecutive to the other case.

(Tr. 604-08). Thus, the trial court imposed an aggregate sentence of fifty-four years.

DECISION

1. Abuse of Discretion

The legislature has prescribed standard, or advisory, sentences for each crime, allowing the sentencing court limited discretion to enhance the sentence to reflect aggravating circumstances or to reduce it to reflect mitigating circumstances. *Lander v. State*, 762 N.E.2d 1208, 1215 (Ind. 2002). The legislature also permits sentences to be imposed consecutively if aggravating circumstances warrant. *Id.* When the trial court imposes consecutive sentences where not required by statute, we examine the record to insure that the court explained its reasons for selecting the sentence. *Id.* Before the trial court can impose a consecutive sentence, the trial court must articulate, explain, and

[1] Bronson testified that his parole ended May 17, 2005. The trial court observed that the records reflected that Bronson "was discharged from his parole on May 17, 2005," but this did not "make sense" because although the record in that regard indicated Bronson had "served a sentence from '03 to '05," Bronson had not been "incarcerated in 2003" or "in 2004 when this crime occurred." (Tr. 609).

evaluate the aggravating circumstances that support the sentence. *Id.* The trial court's assessment of the proper weight of mitigating and aggravating circumstances is entitled to great deference on appeal and will be set aside only upon a showing of a manifest abuse of discretion. *Patterson v. State*, 846 N.E.2d 723, 727 (Ind. Ct. App. 2006).

Bronson first asserts that pursuant to *Robertson v. State*, 860 N.E.2d 621 (Ind. Ct. App. 2007), Indiana Code section 35-50-2-1.3 "applies to persons who committed offenses before the statute was in effect," and "limits the trial court's ability to deviate from the advisory sentence." Bronson's Br. at 7. Although Bronson does not explain his reliance on *Robertson*, the case held that pursuant to Indiana Code section 35-50-2-1.3, only advisory sentences must be run consecutively. We first note that *Robertson* was transmitted on transfer to Indiana's Supreme Court on April 4, 2007. Therefore, its precedential value is unclear. We further note that *Robertson* expressly recognized that our court had "split on the proper interpretation" of that statutory provision, and cited to the conclusion in *White v. State*, 849 N.E.2d 735, 743 (Ind. Ct. App. 2006), "that IC 35-50-2-1.3 does not place any 'additional restrictions on the ability of trial courts to impose consecutive sentences . . . .'" 860 N.E.2d at 624. Most recently, a panel of this court stated that "[u]nless our supreme court instructs otherwise," it would follow "the conclusion reached in *White*." *Luhrsen v. State*, No. 15A01-0605-CR-198 at *7 (Ind. Ct. App. April 20, 2007). Bronson undertakes no analysis of *Robertson* and its holding but simply asserts that his sentence is "unlawful under the precedent established by *Robertson*." Bronson's Br. at 8. Based on the uncertain status of *Robertson* and Bronson's failure to present an argument "supported by cogent reasoning," *see* Ind.

Appellate Rule 46(A)(8)(a), we are not persuaded that *Robertson* renders his sentence unlawful.

Bronson also asserts that the trial court impermissibly used "the nature and elements of the crime . . . as aggravating factors" when it (1) referred to McAtee being "boxed in," "with his sixteen year old girlfriend," and "unarmed"; (2) observed that the events of March 7, 2004, "could have stopped with conspiracy" or battery, but "Bronson's decision . . . escalated it"; and (3) admonished that it would not "countenance individuals trying to seek revenge on a brief physical altercation by ganging up seven people on one, and . . . then using deadly force in order" to inflict revenge. It is true, as Bronson asserts, that in *Marshall v. State*, 832 N.E.2d 615, 623-23 (Ind. Ct. App. 2005), we stated that an element of the crime could not be used as an aggravating circumstance to impose an enhanced sentence. However, we also stated in *Marshall*, that "particularized individual circumstances may constitute a separate aggravating circumstance." *Id.* at 624. Thus, in *Marshall*, "the trial court improperly relied upon D.N.'s age to enhance Marshall's sentence because D.N.'s age [was] a material element of Marshall's crime of Class A felony child molesting." *Id.* at 623. However, the fact that "Marshall held the knife against D.N.'s throat and left a laceration" was a proper "particularized individual circumstance within the trial court's discretion to consider as an aggravator." *Id.* at 624. Bronson does not argue, and we do not find, that McAtee's unarmed status, the presence of his minor girlfriend, or his being trapped were elements of either voluntary manslaughter or conspiracy to commit battery. We find the same

reasoning to apply to Bronson's other assertions of improper considerations by the trial court. Therefore, this argument by Bronson must fail.

Bronson also argues that certain facts found by the trial court were not based on facts admitted by Bronson, contravening *Blakely v. Washington*, 124 S. Ct. 2531, 2536-2639 (2004). Specifically, he directs us to the trial court's "conjecture as to the nature and force of Mr. Bridges' testimony," its statement that Bronson's letters asking to withdraw his guilty plea were "another attempt by the defendant to play the game," its expression of doubt as to the veracity of Bronson's expression of remorse, and the statement concerning the "lack of clarity" as to Bronson's parole status.[2] Bronson's Br. at 9. None of the foregoing comments appear to clearly constitute findings of fact by the trial court. Moreover, even if the comments were findings, we find other findings of aggravating factors dispositive.

We have concluded that the trial court's articulation at sentencing in some detail that the particularized circumstances of Bronson's offenses – the voluntary manslaughter of McAtee; the conspiracy to commit battery upon McAtee; and the conspiracy, while incarcerated on the charge of murder, to commit battery upon Bridges, in an effort to silence a State witness – did constitute the finding of a valid aggravating factor. In addition, the trial court found Bronson's criminal history to be an aggravating circumstance, and the record supports that conclusion. Therefore, we do not find

[2] Bronson's argument that the trial court should not have considered his parole status omits reference to the fact that he admitted to the trial court at the plea hearing that he was on parole at the time of the March 7, 2004 incident.

persuasive his argument that the cited comments by the trial court rendered his sentence improper pursuant to *Blakely*.

We have already noted several valid aggravating circumstances found by the trial court. The trial court found that neither Bronson's age, his statement of remorse, nor his guilty plea were significant mitigating circumstances, a conclusion within the discretion of the trial court. *See Abel v. State*, 773 N.E.2d 276, 280 (Ind. 2002) (trial court determines weight to be given factors argued as mitigating by defendant). Therefore, the aggravating circumstances outweighed the mitigating circumstances. Accordingly, we do not find that the trial court abused its discretion when it sentenced Bronson to consecutively serve terms of (1) forty years for the voluntary manslaughter of McAtee, (2) six years for the conspiracy to commit battery of McAtee, and (3) eight years for the conspiracy to commit battery of Bridges -- an aggregate sentence of fifty-four years.

2. Inappropriate Sentence

Bronson also argues that his sentence should be revised pursuant to our review under Indiana Appellate Rule 7(B), whereby we consider whether "the sentence is inappropriate in light of the nature of the offense and the character of the offender." Bronson suggests that we should revise his sentence, inasmuch as he pleaded guilty, has expressed remorse, and has "attempted to begin a positive way of life" since incarceration. Bronson's Br. at 11. We cannot agree.

Bronson had been involved with law enforcement for more than a third of his life and was on parole when he killed McAtee. Bronson joined with a group of six other men and trapped the victim and his minor girlfriend before shooting him. Neither had done

anything to Bronson, nor did Bronson know them prior to the incident. Bronson fired four shots through the windshield, killing McAtee. Thereafter, while incarcerated in jail, Bronson conspired with another man to commit the battery of Bridges, who would have testified that he saw Bronson fire the shots at McAtee. Based upon Bronson's character and the nature of his offenses, the aggregate fifty-four sentence is not inappropriate.

Affirmed.

BAKER, J., and ROBB, J., concur.